

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Louis Pepe,

Complainant

against

Docket #FIC 2022-0348

Clerk, City of Hartford; and  
City of Hartford,

Respondents

July 26, 2023

The above-captioned matter was heard as a contested case on April 20, 2023, at which time complainant and the respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint.

After consideration of the entire record, the following facts are found and conclusions of law are reached:

1. The respondents are public agencies within the meaning of §1-200(1), G.S.
2. It is found that, by letter dated June 9, 2022<sup>1</sup>, the complainant requested that the respondents provide him with copies of the following records:
  - a. All public records or files relating to or concerning, in any way or to any extent, the decision by The City of Hartford to terminate the following agreements, including without limitation, the making and implementation of said decision:
    - i. Master Development Agreement by and between The City of Hartford, Connecticut and DoNo Hartford LLC dated as of February 4,

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<sup>1</sup> In the June 9 request, the complainant explained that he had submitted a previous request to the respondents for the same records through the City of Hartford's Freedom of Information web portal. In the initial request, the complainant inadvertently selected the option to have the requested records produced in hard copy and delivered via regular mail. In the June 9 request, the complainant clarified that he wanted electronically stored records produced on a thumb drive and emails produced in a .pst format.

- 2015;
- ii. Development Services Agreement between the City of Hartford, Connecticut and DoNo Hartford LLC dated February 4, 2015;
  - iii. Design Build Contract (a/k/a “Builder Agreement”) between DoNo Hartford LLC and Centerplan Construction Company, LLC dated February 6, 2015;
  - iv. Parcel Ground Leases between The City of Hartford as lessor and DoNo Parcel BCD LLC; DoNo Parcel E LLC; DoNo Parcel F LLC; and DoNo Parcel G LLC as lessee;
- b. All public records or files relating to or concerning, in any way or to any extent, the negotiations and execution of the Surety Takeover Agreement Pursuant to Performance Bond between and among The City of Hartford, Connecticut, the Hartford Stadium Authority, and Arch Insurance Company dated October 17, 2016 (the “Takeover Agreement”), including, without limitation, any communications between any City of Hartford employee or official and any employee or representative of Arch Insurance Company between April 1, 2016 and the present date concerning the Development Services Agreement or the Design Build Contract described in paragraphs [2.a.ii and 2.a.iii,] above or the Takeover Agreement;
- c. All public records or files relating to or concerning in any way or to any extent the finances of the Hartford Stadium Authority from the date of its creation to the present date, including, without limitation, the cash or cash equivalent it had on hand, at all times; and
- d. Any and all public records or files relating to or concerning, in any way or to any extent, the Development Agreement and Agreement to Lease<sup>2</sup> by

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<sup>2</sup> The Commission notes that the complainant clarified that the following records had already been provided and therefore were not being requested at this time: a copy of the Developer Agreement and Agreement to Lease; Agreement and Estoppel of Ground Lessor Between City of Hartford and Capital Region Development Authority; Ground Lease for 1212 Main Street, Hartford (“Parcel C”); Parcel C Access Agreement; Randall Salvatore’s Sept. 30, 2020 Solvency Certificate; Home Improvement Partnerships Program Grant Agreement; Open-Ended Leasehold Construction Mortgage Deed & Security Agreements dated September 30, 2020, including Mortgage to

and between The City of Hartford Connecticut (the “City”) and RMS DoNo 1 LLC (“RMS”) dated March 3, 2020, including without limitation:

- i. The response RMS submitted to the City’s request for Proposals issued by the City in 2014 and 2017 for the development of the property described in said Agreement;
- ii. Any communication between any City of Hartford employee official and any representative of RMS between February 23, 2021 and the present date;
- iii. Any development proformas submitted by RMS to the City;
- iv. Any and all payments made in accordance with or pursuant to said Agreement by RMS to the City of Hartford;
- v. Any and all loan documents relating to said Agreement;
- vi. Any and all PILOT payments made in accordance with or pursuant to said Agreement by RMS to the City of Hartford;
- vii. Any and all options to exercise development rights by RMS pursuant to said Agreement;
- viii. Any and all schedules or timetables for the development of any property pursuant to said Agreement;
- ix. Any and all ground leases or parking leases entered into by the City and RMS or its affiliate pursuant to said Agreement; and
- x. Any title insurance policy issued by any insurer for any property described in said Agreement.

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People’s United (\$36 Million); Mortgage to Capital Region Development Authority (\$11.8 Million); and Assignment of Leases and Rentals to People’s Bank and Capital Region Development Authority.

3. It is found that, by email dated June 22, 2022, the respondents acknowledged the request, and informed the complainant that the request had been forwarded to the City of Hartford's Department of Developmental Services within the Planning and Zoning Division for processing.

4. It is found that, by email dated July 8, 2022, the complainant requested a status update on the processing of his request.

5. It is found that, by email dated July 8, 2022, the respondents informed the complainant that the request had been assigned to the Corporation Counsel for the City of Hartford, who would be in touch with the complainant once the requested records had been compiled.

6. It is found that, by email dated July 14, 2022, the complainant requested a second status update on the processing of his request.

7. It is found that, by email dated July 26, 2022, the complainant informed the respondents that, if he did not receive the requested records by August 1, 2022, he would file a complaint with the Commission.

8. It is found that, by email dated July 29, 2022, Corporation Counsel informed the complainant that his request for records had been transferred to his office on or around June 11, 2022, and that, since such time, he and his staff had been working diligently to identify responsive records, including defining the search parameters for the technology department. Corporation Counsel further informed the complainant that he would have a better understanding in the coming week as to when the searches would be completed and, thereafter, he would review all responsive records to determine whether any exemptions to disclosure applied to the records.

9. It is found that, by email dated August 3, 2022, the complainant requested a third status update on the processing of his request.

10. By email dated and filed August 8, 2022, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to provide him with the requested records.

11. Section 1-200(5), G.S., provides:

"[p]ublic records or files" means any recorded data or information relating to the conduct of the public's business prepared, owned, used, received or retained by a public agency, or to which a public agency is entitled to receive a copy by law or contract under section 1-218, whether such data or information be handwritten, typed, tape-recorded, videotaped, printed, photostated, photographed or recorded by any other method.

12. Section 1-210(a), G.S., provides in relevant part that:

[e]xcept as otherwise provided by any federal law or state statute, all records maintained or kept on file by any public agency, whether or not such records are required by any law or by any rule or regulation, shall be public records and every person shall have the right to . . . (3) receive a copy of such records in accordance with section 1-212.

13. Section 1-212(a), G.S., provides in relevant part that “[a]ny person applying in writing shall receive, promptly upon request, a plain, facsimile, electronic or certified copy of any public record.”

14. It is found that the requested records are public records within the meaning of §§1-200(5), 1-210(a), and 1-212(a), G.S.

### **Background**

15. It is found that the complainant’s law firm<sup>3</sup> represents DoNo Hartford I, LLC (“DoNo”) and Centerplan Construction Company (“Centerplan”). It is found that, in early 2015, the City of Hartford hired DoNo to develop and construct the Dunkin Donuts Park baseball stadium (the “Ballpark” or the “project”). DoNo, in turn, hired Centerplan to be the project contractor. It is found that, pursuant to contract, Centerplan was required to provide the City of Hartford with performance and payment bonds before it began construction, which it did through its bonding surety company, Arch Insurance (“Arch”).

16. It is found that the original contract indicated that the project was to be built and completed by March 2016 in accordance with the plans prepared by the City of Hartford’s architect, Pendulum Studios II, LLC (“Pendulum”), for a price of \$56 million. It is found that, during the project, construction-related issues arose between the parties concerning the cost of construction, the design of the building, and other matters. As a result of these issues, it is found that, on January 19, 2016, the City of Hartford and DoNo entered into a Term Sheet agreement, which agreement was meant to establish a final design, required the City of Hartford to provide express written consent for any additional changes, increased the project’s budget, and set forth a new substantial completion date for the Ballpark of May 17, 2016.

17. On June 6, 2016, the City terminated the contract with DoNo and Centerplan and made demands against Arch under the performance bond to complete the project. Thereafter, on October 17, 2016, Arch and the City of Hartford entered into a Takeover Agreement, whereby Arch arranged for completion of the project by a different contractor. It is found that the Ballpark was completed by a different contractor in March 2017.

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<sup>3</sup> The complainant’s law firm is McElroy Deutsch Mulvaney & Carpenter, LLP.

18. On July 13, 2016, following their termination from the project, DoNo and Centerplan commenced a lawsuit against the City of Hartford. The case was tried before a jury and, on July 2, 2019, the jury rendered a verdict in favor the City of Hartford and judgment entered accordingly. Thereafter, DoNo and Centerplan appealed the judgment. On May 22, 2022, the Connecticut Supreme Court reversed and remanded the case for a new trial. At the time of the contested case hearing, DoNo and Centerplan had filed a second amended complaint against the City of Hartford alleging, among other things, wrongful termination, and breach of contract. Currently, the parties have a trial date of April 2024.

### **The Respondents' Disclosure of Records and In Camera Submission**

19. It is found that, prior to the contested case hearing, the respondents had provided the complainant with 2600 documents by way of four separate disclosures. It is found that the respondents had also provided the complainant with a detailed privilege log, which indicated the legal grounds for withholding the remaining 537 documents.

20. It is found that, following the contested case hearing, only 47 documents (out of the 537 documents referred to in paragraph 19, above,) remained at issue.

21. On June 2, 2023, the respondents submitted the records at issue to the Commission for in camera inspection.<sup>4</sup> The in camera records shall be referred to as IC-2022-0348-1 through IC-2022-0348-149.

### **In Camera Records For Which No Claim of Exemption Was Raised or For Which No Claim of Exemption Is Applicable**

22. Initially, it is noted that the following records were included in the in camera submission so that the Commission could review entire documents in context: IC-2022-0348-39; IC-2022-0348-40; IC-2022-0348-42 through IC-2022-0348-44; IC-2022-0348-89; IC-2022-0348-92; IC-2022-0348-102; IC-2022-0348-103; IC-2022-0348-119; IC-2022-0348-121; IC-2022-0348-122; IC-2022-0348-126; IC-2022-0348-127; IC-2022-0348-131; IC-2022-0348-135; IC-2022-0348-146; and IC-2022-0348-147.

23. The respondents did not raise a claim of exemption with regard to the records identified in paragraph 22, above, and therefore the Commission assumes that such records have been disclosed to the complainant. Accordingly, such records will not be further addressed herein.

24. In addition, upon review of the complainant's Post-Hearing brief, dated May 26, 2023 (see Brief, Ex. B, C), it is found that the following records have already been disclosed to the complainant: IC-2022-0348-63; IC-2022-0348-64; IC-2022-0348-88;

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<sup>4</sup> The Commission notes that the respondents originally submitted the in camera records to the Commission on May 12, 2023. Upon order of the hearing officer, the respondents retrieved the in camera records, paginated them, and, on June 2, 2023, resubmitted the records to the Commission.

and IC-2022-0348-91. Accordingly, such records will not be further addressed herein.

25. Finally, on the index to the in camera records, the respondents indicated that the following in camera records are not responsive to the underlying request: IC-2020-0348-45 through IC-2020-0348-52.

26. Upon careful in camera inspection, it is found that the records identified in paragraph 25, above, are not responsive to the request set forth in paragraph 2, above. Accordingly, such records need not be disclosed to the complainant and will not be further addressed herein.

**Section 1-210(b)(4), G.S.**

27. The respondents claimed that all of the remaining in camera records are exempt from disclosure, either in whole or in part, pursuant to §1-210(b)(4), G.S.

28. Section 1-210(b)(4), G.S., provides that disclosure is not required of “[r]ecords pertaining to strategy and negotiation with respect to pending claims or pending litigation to which the public agency is a party until such litigation or claim has been finally adjudicated or otherwise settled.”

29. Section 1-200(8), G.S., defines “pending claim” to mean “a written notice to an agency which sets forth a demand for legal relief or which asserts a legal right stating the intention to institute an action in an appropriate forum if such relief or right is not granted.”

30. Section 1-200(9), G.S., defines “pending litigation” to mean “(A) a written notice to an agency which sets forth a demand for legal relief or which asserts a legal right stating the intention to institute an action before a court if such relief or right is not granted by the agency; (B) the service of a complaint against an agency returnable to a court which seeks to enforce or implement legal relief or a legal right; or (C) the agency’s consideration of action to enforce or implement legal relief or a legal right.”

31. Our Supreme Court has determined, relying on Webster’s Third New International Dictionary, that “strategy” is defined as “the art of devising or employing plans or stratagems.” City of Stamford v. Freedom of Info. Comm’n, 241 Conn. 310, 318 (1997). Further, the court stated that “negotiation is defined as the action or process of negotiating,” and “negotiate is variously defined as: to communicate or confer with another so as to arrive at the settlement of some matter: meet with another so as to arrive through discussion at some kind of agreement or compromise about something; to arrange for or bring about through conference and discussion: work out or arrive at or settle upon by meetings or agreements or compromises; and to influence successfully in a desired way by discussion and agreements or compromises.” (Internal quotations omitted). Id.

32. The Supreme Court has also determined that “pending” claim or litigation includes claims or litigation “already in existence and in progress,” as well as imminent

or threatened litigation not yet filed, see Bd. of Educ. v. Freedom of Info. Comm'n, 217 Conn. 153, 161 (1991), and that “finally adjudicated” means “completion of an appeal to the highest court” or “expiration of a party’s right to appeal,” see Planning and Zoning Comm’n of the Town of Monroe, et al. v. Freedom of Info. Comm’n, et al., 316 Conn. 1, 17-18 (2015).

33. Upon careful in camera inspection, it is found that the following records, or portions thereof, pertain to strategy or negotiation with respect to pending litigation concerning the City of Hartford within the meaning of §1-210(b)(4), G.S.:

IC-2022-0348-1 (entire first email); IC-2022-0348-3 (entire record); IC-2022-0348-4 (entire record); IC-2022-0348-8 (entire third email); IC-2022-0348-93 (entire record); IC-2022-0348-94 (entire second email); IC-2022-0348-95 (entire third email); IC-2022-0348-96 (entire record); IC-2022-0348-97 (entire fourth email); IC-2022-0348-98 (entire record); IC-2022-0348-99 (entire first email); IC-2020-0348-105 (entire record); IC-2022-0348-106 (entire fifth email); IC-2022-0348-107 (entire record); IC-2022-0348-110 (entire second email); IC-2022-0348-112 through IC-2022-0348-115 (all records); IC-2022-0348-118 (entire first and second emails); IC-2022-0348-128 (entire first email); and IC-2022-0348-136 through IC-2022-0348-143 (all records).

34. It is concluded that the respondents did not violate the disclosure provisions of §§1-210(a) and 1-212(a), G.S., when they declined to disclose a copy of the records, or portions thereof, identified in paragraph 33, above, to the complainant.

35. To the extent that the records identified in paragraph 33, above, have been determined to be exempt from disclosure in their entirety, the Commission need not address any additional exemptions raised with respect to such records.

### **Section 1-210(b)(10), G.S.**

#### **Attorney-Client Privilege**

36. Next, the respondents claimed that the following records are exempt from disclosure, either in whole or in part, pursuant to §1-210(b)(10), G.S., which section permits an agency to withhold from disclosure records of “communications privileged by the attorney-client relationship”:

IC-2022-0348-1; IC-2022-0348-2; IC-2022-0348-5 through IC-2022-0348-21; IC-2022-0348-38 (highlighted sentence); IC-2022-0348-41 (highlighted paragraph); IC-2022-0348-53 through IC-2022-0348-62; IC-2022-0348-65 thorough IC-2022-0348-87; IC-2022-0348-90; IC-2022-0348-94; IC-



2020-0348-95; IC-2022-0348-97; IC-2022-0348-99 through IC-2022-0348-101; IC-2022-0348-104; IC-2022-0348-106; IC-2022-0348-108 through IC-2022-0348-111; IC-2022-0348-116 through IC-2022-0348-118; IC-2022-0348-120 (two highlighted portions); IC-2022-0348-123; IC-2022-0348-124; IC-2022-0348-125 (highlighted paragraph); IC-2022-0348-128; IC-2022-0348-129; IC-2022-0348-130 (highlighted paragraph); IC-2022-0348-132; IC-2022-0348-133; IC-2022-0348-134 (three first lines); IC-2022-0348-144; IC-2022-0348-145; IC-2022-0348-148 and IC-2022-0348-149.

37. Section 52-146r(b), G.S., provides that “[i]n any civil or criminal case or proceeding or in any legislative or administrative proceeding, all confidential communications shall be privileged and a government attorney shall not disclose any such communications unless an authorized representative of the public agency consents to waive the privilege and allow disclosure.”

38. Section 52-146r(a)(2), G.S., defines “confidential communications” to mean:

all oral and written communications transmitted in confidence between a public official or employee of a public agency acting in the performance of his or her duties or within the scope of his or her employment and a government attorney relating to legal advice sought by the public agency or a public official or employee of such public agency from that attorney, and all records prepared by the government attorney in furtherance of the rendition of such legal advice.

39. In Maxwell v. Freedom of Info. Comm’n, 260 Conn. 143, 149 (2002), the Connecticut Supreme Court held that §52-146r, G.S., “merely condif[ies] the common law attorney-client privilege as this court previously defined it.” The Court further stated that “both the common-law and statutory privileges protect those communications between a public official or employee and an attorney that are confidential, made in the course of the professional relationship that exists between the attorney and his or her public agency client and relate to legal advice sought by the agency from the attorney.” Id.

40. The Supreme Court has adopted a four part test to determine whether communications are subject to the attorney client privilege: “(1) the attorney must be acting in a professional capacity for the agency; (2) the communications must be made to the attorney by current employees or officials of the agency; (3) the communications must relate to the legal advice sought by the agency from the attorney; and (4) the communications must be made in confidence.” Shew v. Freedom of Info. Comm’n, 245 Conn. 149, 159 (1998). “The burden of establishing the applicability of the privilege rests with the party invoking it.” Harrington v. Freedom of Info. Comm’n, 323 Conn. 1,

12, (2016) (“Harrington”). If it clear from the face of the records, extrinsic evidence is not required to prove the existence of the attorney-client privilege.” Lash v. Freedom of Info. Comm’n, 300 Conn. 511, 516-17 (2011).

41. Moreover, in Connecticut, the attorney-client privilege protects both the confidential giving of professional advice by an attorney acting in the capacity of a legal advisor to those who can act on it, as well as the giving of information to the lawyer to enable counsel to give sound and informed advice....The privilege fosters full and frank communications between attorneys and their clients and thereby promote[s] the broader public interests in the observation of law and [the] administration of justice.” PSE Consulting, Inc. v. Frank Mercede & Sons, Inc., 267 Conn. 279, 329–30 (2004).

42. The Supreme Court, however, has also recognized that “[n]ot every communication between attorney and client falls within the [attorney-client] privilege.” Harrington, 323 Conn. at 14 (quoting Ullmann v. State, 230 Conn. 698, 713 (1994)). In Harrington, the Court held that, when an attorney provides both legal and nonlegal professional advice, communications containing such advice will be privileged “if the non-legal aspects of the consultation are integral to the legal assistance given and the legal assistance is the primary purpose of the consultation....” Harrington, at 17. Under such circumstances, “it is not enough for the party invoking the privilege to show that a communication to legal counsel relayed information that might become relevant to the future rendering of legal advice. Instead, the communication must also either explicitly or implicitly seek specific legal advice about that factual information.” (Citation omitted; internal quotation marks omitted.). Id. at 16. Moreover, when an attorney’s primary role is that of a nonlegal professional advisor, there must be “a clear basis to conclude that information was being conveyed to [her] for the purpose of having [her] act in the role of legal advisor or that [she] was providing a legal opinion. Extrinsic evidence may undoubtedly provide context for making such as assessment.” Id. at 23.

43. Upon careful in camera inspection, it is found that the following records, or portions thereof, are communications “between a public official or employee of a public agency acting in the performance of his or her duties or within the scope of his or her employment and a government attorney,” which “relate to legal advice” sought by the public agency client from the attorney, and which were “transmitted in confidence,” within the meaning of §52-146r(a)(2), G.S.:

IC-2022-0348-5 through IC-2022-0348-7 (all records); IC-2022-0348-10 through IC-2022-0348-12 (all records); IC-2022-0348-20 (entire second email); IC-2022-0348-21(entire record); IC-2022-0348-38 (one highlighted sentence); IC-2022-0348-41 (one highlighted paragraph); IC-2022-0348-53 through IC-2022-0348-62 (all records); IC-2022-0348-70 through IC-2022-0348-79 (all records); IC-2022-0348-80 (entire second email); IC-2022-0348-81 (entire first email); IC-2022-0348-82 (entire second email); IC-2022-0348-101 (entire second email); IC-2022-0348-123 (entire first email); IC-2022-0348-124 (entire fourth

email); IC-2022-0348-125 (all highlighted portions); IC-2022-0348-129 (entire email that was sent at 6:04 PM); IC-2022-0348-130 (all highlighted portions); IC-2022-0348-133 (entire first and last emails); IC-2022-0348-134 (three first lines); IC-2022-0348-145 (entire record); IC-2022-0348-148 (entire record) and IC-2022-0348-149 (entire record).

44. It is concluded that records, or portions thereof, identified in paragraph 43, above, constitute communications privileged by the attorney-client relationship, within the meaning of §1-210(b)(10), G.S. It is found that the attorney-client privilege has not been waived with respect to such records. Accordingly, it is further concluded that the respondents did not violate the disclosure provisions of §§1-210(a) and 1-212(a), G.S., when they declined to disclose a copy of such records to the complainant.

45. To the extent that the records identified in paragraph 43, above, have been determined to be exempt from disclosure in their entirety, the Commission need not address any additional exemptions raised with respect to such records.

46. The respondents also claimed<sup>5</sup> that the following records are privileged attorney-client communications by way of the common interest doctrine even though such records have been shared by and between the City of Hartford and Pendulum, and the attorneys for both entities: IC-2022-0348-22 through IC-2022-0348-37.

47. Generally, “once a privileged communication has been purposely disclosed to a third party, the attorney-client privilege is waived, unless the disclosed material falls under the common interest rule.” Raymond Rd. Assocs., LLC v. Taubman Centers, Inc., No. X02UWYCV075007877S, 2009 WL 4069251, at \*8 (Conn. Super. Ct. Oct. 30, 2009), citing United States v. United Techs Corp., 979 F.Supp. 108, 111 (D.Conn. 1997). The common interest rule, also referred to as the common interest doctrine, applies “where the parties are represented by separate attorneys but share a common legal interest.” State Farm Mut. Auto. Ins. Co. v. Hawkins, No. 08-10367, 2010 WL 2287454, at \*8 (E.D. Mich. June 4, 2010). Under the doctrine, privileged communication can be exchanged without waiving the privilege, provided that the parties “share a ‘common interest about a legal matter,’ but ‘it is ... unnecessary that there be actual litigation in progress....’” (Citations omitted.) Bianco v. Denning, No. FSTCV206045111S, 2021 WL 4906070, at \*3 (Conn. Super. Ct. Sept. 20, 2021), reconsideration granted in part, No. FSTCV206045111S, 2021 WL 5277877 (Conn. Super. Ct. Oct. 27, 2021); accord, Fensore v. Lyons, No. FBTCV166057520S, 2017 WL 1311107, at \*2 (Conn. Super. Ct. Mar. 17, 2017); Hubbell v. Ratcliffe, No. HHDX04CV08403824S, 2010 WL 4885631, at \*8 (Conn. Super. Ct. Nov. 8, 2010)

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<sup>5</sup> The respondents claimed that IC-2022-0348-22 through IC-2022-0348-37 were exempt from disclosure pursuant to the attorney-client privilege in their pre-hearing brief. See Respondents’ Brief, at 10-11 (April 19, 2023).

48. A party relying on the common interest doctrine to shield communications from disclosure has the burden of establishing all of the elements of the attorney-client privilege, see ¶ 38, above, as well as the burden of establishing that a common legal interest exists between the entities who are raising the protection. See Ford Motor Co. v. Michigan Consol. Gas Co., No. 08-CV-13503, 2015 WL 6470830, at \*5 (E.D. Mich. Oct. 27, 2015) (“for the common-interest doctrine to apply, the underlying shared communication must be privileged.”).

49. Upon careful in camera inspection, it is found that records identified in paragraph 46, above, are communications that were shared between the City of Hartford and Pendulum, and their attorneys, in the course of an ongoing common interest regarding a legal matter and were intended to further such common interest. It is further found that such records satisfy all of the requirements of §52-146r(a)(2), G.S. See ¶ 38, above.

50. It is also found that the attorney-client privilege has not been waived with respect to the records identified in paragraph 46, above.

51. Accordingly, it is concluded the records identified in paragraph 46, above, constitute communications privileged by the attorney-client relationship, within the meaning of §1-210(b)(10), G.S. It is further concluded that the respondents did not violate the disclosure provisions of §§1-210(a) and 1-212(a), G.S., when they declined to disclose a copy of such records to the complainant.

52. Because the records identified in paragraph 46, above, have been determined to be exempt from disclosure in their entirety, the Commission need not address any additional exemptions raised with respect to such records.

53. However, upon careful in camera inspection, it is further found that the following records, or portions thereof, are not “confidential communications,” within the meaning of §52-146r(a)(2), G.S.:

IC-2022-0348-1 (from the second email to the bottom of the page); IC-2022-0348-2 (entire record); IC-2022-0348-8 (entire record, with the exception of the third email); IC-2022-0348-9 (entire record); IC-2022-0348-13 through IC-2022-0348-19 (all records); IC-2022-0348-20 (entire record, with the exception of the second email); IC-2022-0348-65 through IC-2022-0348-69 (all records); IC-2022-0348-80 (entire record, with the exception of the second email); IC-2022-0348-81 (entire record, with the exception of the first email); IC-2022-0348-82 (entire record, with the exception of the second email); IC-2022-0348-83 through IC-2022-0348-87 (all records); IC-2022-0348-90 (entire record); IC-2022-0348-94 (entire record, with the exception of the second email); IC-2022-0348-95 (entire record, with the exception of the third email); IC-

2022-0348-97 (entire record, with the exception of the fourth email); IC-2022-0348-99 (entire record, with the exception of the first email); IC-2022-0348-100 (entire record); IC-2022-0348-101 (entire record, with the exception of the second email); IC-2022-0348-104 (entire record); IC-2022-0348-106 (entire record, with the exception of the fifth email); IC-2022-0348-108 (entire record); IC-2022-0348-109 (entire record); IC-2022-0348-110 (entire record, with the exception of the second email); IC-2022-0348-111 (entire record); IC-2022-0348-116 (entire record); IC-2022-0348-117 (entire record); IC-2022-0348-118 (entire record, with the exception of the first and second emails); IC-2022-0348-120 (entire record); IC-2022-0348-123 (entire record, with the exception of the first email); IC-2022-0348-124 (entire record, with the exception of the fourth email); IC-2022-0348-128 (entire record, with the exception of the first email); IC-2022-0348-129 (entire record, with the exception of the email that was sent at 6:04 PM); IC-2022-0348-132 (entire record); IC-2022-0348-133 (entire record, with the exception of the first and last emails); and IC-2022-0348-144 (entire record).

54. Accordingly, it is concluded that the records, or portions thereof, identified in paragraph 53, above, are not exempt from disclosure pursuant to §1-210(b)(10), G.S.

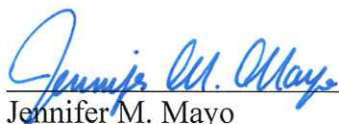
55. It is therefore concluded that the respondents violated the disclosure provisions of §§1-210(a) and 1-212(a), G.S., by declining to disclose a copy of the records, or portions thereof, identified in paragraph 53, above, to the complainant.

The following order by the Commission is hereby recommended on the basis of the record concerning the above-captioned complaint.

1. Within 45 days of the Notice of Final Decision, the respondents shall disclose to the complainant, free of charge, the records, or portions thereof, described in paragraph 53 of the findings, above.

2. Henceforth, the respondents shall strictly comply with the disclosure requirements of §§1-210(a) and 1-212(a), G.S.

Approved by Order of the Freedom of Information Commission at its regular meeting of July 26, 2023.



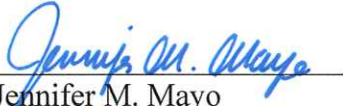
Jennifer M. Mayo  
Acting Clerk of the Commission

PURSUANT TO SECTION 4-180(c), G.S., THE FOLLOWING ARE THE NAMES OF EACH PARTY AND THE MOST RECENT MAILING ADDRESS, PROVIDED TO THE FREEDOM OF INFORMATION COMMISSION, OF THE PARTIES OR THEIR AUTHORIZED REPRESENTATIVE.

THE PARTIES TO THIS CONTESTED CASE ARE:

**LOUIS PEPE**, c/o Attorney Thomas Librizzi, McElroy Deutsch Mulvaney & Carpenter LLP, One State Street, Hartford, CT 06103 and Attorney Jonathan Friedler, McElroy Deutsch Mulvaney & Carpenter LLP, One State Street, Hartford, CT 06103

**CLERK, CITY OF HARTFORD; AND CITY OF HARTFORD**, c/o Attorney Leslie King, Carlton Fields, One State Street, Suite 1800, Hartford, CT 06103

  
Jennifer M. Mayo  
Acting Clerk of the Commission